IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.842 OF 2005
IN
EXECUTION APPLICATION NO.329 OF 2003
IN
ARBITRATION CASE NO.A-66 OF 2001-2002

M/s.N.R.Design Centre
Pvt. Ltd. ..Plaintiffs.

Vs.

M/s.Chetan Fabrics ..Defendants.
And
Chetan R. Parekh ..Applicant.

Mr.Rishabh Shah i/b.Ms.H.Jhariya for the Applicant.

Mr.S.K.Chaurasia i/b.Mr.A.M.Saraogi for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 14TH FEBRUARY, 2006

P.C. :

The Applicant, Chetan R. Parekh, has taken out the above Chamber Summons for an order recalling the warrant of attachment dated 22.9.2003 in the above Execution Application in respect of the residential premises viz. "Yogi Smruti", Vile Parle, Mumbai, for an order raising the attachment thereon.

2. An award was passed against the Defendants. There is no dispute as far as this Chamber Summons is concerned that the award is executable against

the Defendants. It is also admitted that the said premises belongs to the Applicant. The only question that falls for consideration is whether the Applicant was the proprietor or a partner of the Defendants at the relevant time.

3. The arbitration proceedings were commenced in respect of transactions from 18.1.1998 onwards. The statement of claim was filed on 10.1.2001. The award was passed on 21.1.2002.

4. It appears that there was a firm which carried on business in the name and style of M/s.Chetan Fabrics. The Applicant was the partner of that firm. However, the firm had been dissolved on 1.4.1997. The same was intimated to the Registrar of Firms. In the register of firms, the necessary entry to this effect was made on 5.6.1997. Thus, the Applicant could not be proceeded against as a partner of the erstwhile firm.

5. It appears that the Applicant’s father continued to carry on business as a sole proprietor in the firm, in the name and style of M/s.Chetan Fabrics. This is admitted by the Applicant in this Chamber Summons and, by the Defendants in Chamber Summons

No.843 of 2005, which I shall deal with separately. The only manner in which the award can be executed against the Applicant is by establishing that he was the proprietor of the Defendants firm or a partner thereof.

6. There is nothing to indicate that the Applicant is the partner of the Defendant firm. Nor is there anything to indicate that he was the proprietor of the Defendants firm. In fact, in an affidavit filed by one Ram Kumar Lohia, the Director of the Plaintiffs, in Chamber Summons No.1698 of 2003, it was stated as under :

> "I say that it is pertinent to note that the said Applicant had no where in the Affidavit in support of Chamber Summons had bothered to disclose his relation with the Defendants though he is a family member of the proprietor of the Defendants."

The Applicant in that Chamber Summons is the Applicant in the present Chamber Summons. Thus, even according to the Plaintiffs, the Applicant is not the proprietor of the Defendants firm but only a family member of the proprietor of the Defendants firm.

7. In the circumstances, the Chamber Summons is made absolute in terms of prayers (a) and (b). There shall however be no order as to costs.